LIBRARY
SUPREME COURT, U.S.

Office-Supreme Court, U. S.
FILED
OCT 9 1950
CHARLES ELMORE CROPLEY
CLERK

No. 71

In the Supreme Court of the United States

OCTOBER TERM, 1950

INTERNATIONAL WORKERS ORDER, INC. AND ARTHUR LOWNDES DRAYTON, PETITIONERS

v.

J. HOWARD MCGRATH, INDIVIDUALLY AND AS ATTORNEY GENERAL OF THE UNITED STATES, ET AL.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR RESPONDENTS

INDEX

	Page
Opinions below	1
Jurisdiction	1
Questions presented	2
Statute and Executive Order involved	2
Statement	2
Argument	7
Conclusion	13
Appendix: Letter from Chairman of the Loyalty Review Board to the Solicitor General	14

CITATIONS

Cases:

Bailey v. *Richardson*, No. 49, this Term 2, 3, 8, 13

Chandra, Krishna, In re, Naturalization No. 3934, District Court for the Northern District of California 11

Joint Anti-Fascist Refugee Committee v. *Clark*, 177 F. 2d 79 .. 6, 7

Joint Anti-Fascist Refugee Committee v. *McGrath*, No. 8, this Term 3, 8, 13

Stasiukevich v. *Nicolls*, 168 F. 2d 474 11

Tutun v. *United States*, 270 U. S. 568 10

Statutes:

Act of October 14, 1940, 54 Stat. 1137:

Sec. 301 10

Sec. 305 ..... 8, 9

Sec. 333 8

Sec. 335 10

Hatch Act, Sec. 9A, 53 Stat. 1147, 1148, 5 U. S. C., Supp. II, 118j 2

Miscellaneous:

Executive Order 9835, 12 F. R. 1935 2

Federal Rules of Civil Procedure, Rules 20, 24 (b) 5

909205—50

In the Supreme Court of the United States

OCTOBER TERM, 1950

No. 71

INTERNATIONAL WORKERS ORDER, INC. AND ARTHUR LOWNDES DRAYTON, PETITIONERS

v.

J. HOWARD MCGRATH, INDIVIDUALLY AND AS ATTORNEY GENERAL OF THE UNITED STATES, ET AL.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR RESPONDENTS

OPINIONS BELOW

The opinion of the District Court for the District of Columbia (R. 58) is reported at 88 F. Supp. 873. The opinion of the Court of Appeals for the District of Columbia Circuit (R. 63–69) is reported at 182 F. 2d 368.

JURISDICTION

The judgment of the Court of Appeals was entered on March 22, 1950 (R. 70). The petition for a writ of certiorari was filed on May 11,

1950, and was granted on October 9, 1950. The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

QUESTIONS PRESENTED

1. Whether petitioner International Workers Order, Inc. has any legal standing or right to challenge a designation, made by the Attorney General pursuant to instructions issued by the President under Executive Order 9835, that petitioner International Workers Order, Inc., is a Communist organization.

2. Whether the motion for leave to intervene filed by petitioner Drayton in the District Court is now moot because Drayton has been cleared of charges of disloyalty by the Loyalty Review Board and has been restored to his position in the Government service.

STATUTE AND EXECUTIVE ORDER INVOLVED

Section 9A of the Hatch Act, 53 Stat. 1147, 1148, 5 U. S. C., Supp. II, 118j, and Executive Order 9835, 12 F. R. 1935, are set forth in the Appendix to the Brief for Respondents in *Bailey* v. *Richardson*, No. 49, this Term.

STATEMENT

This action was brought by petitioner International Workers Order, Inc. (IWO) to challenge its designation by the Attorney General, for the purposes of the Federal Government's loyalty program, as a Communist organization. The

designation of organizations and the publication thereof pursuant to Executive Order 9835 are fully described at pp. 14–24 of the Brief for Respondents in *Bailey* v. *Richardson*, No. 49, this Term, and pp. 3–4, of the Brief for Respondents in *Joint Anti-Fascist Refugee Committee* v. *McGrath*, No. 8, this Term.

IWO alleges that it has suffered "serious and irreparable loss and damage" as the result of the above described designation and that the actions of respondents have deprived it of "rights, privileges and immunities secured under the Constitution and laws of the United States, including Article III and Amendments I, V, IX, and X, of the Constitution." (R. 2–3, 21). Specifically the injuries alleged are these: IWO, an avowed fraternal benefit society (R. 4–10), has lost and will lose, members, especially present and prospective civil servants;[1] subordinate bodies of IWO have been denied meeting places; the Commissioner of Internal Revenue has revoked the tax exempt status of IWO and certain of its affiliates;[2] State

[1] The complaint contains no allegation as to the number or proportion of IWO's membership which consists of Federal employees, or of the extent of the claimed injury attributable to the alleged dropping out of Federal employees.

[2] The complaint alleges that IWO was deprived of its tax exempt status on February 4, 1948 (R. 16), but petitioner's Exhibit G (R. 31–32) shows that such action was taken on February 27, 1947, nine months before it was designated a Communist organization by the Attorney General on November 24, 1947 (R. 15).

officials have instituted investigations and proceedings to rescind the various charters, licenses and franchises possessed by IWO; private employers having Government contracts have discharged members of IWO at the behest of the contracting Government agencies; members have been denied naturalization or have had their petitions for naturalization held in abeyance because of their membership; and members who are Federal employees have been subjected to charges of disloyalty and to dismissal because of their membership. In short, "the Order and its members * * * have suffered and will continue to suffer public shame, disgrace, ridicule and obloquy, and economic coercion and injury." (R. 16–18).

Accordingly, IWO prays that respondents, the Attorney General and the chairman and members of the Loyalty Review Board of the Civil Service Commission, be enjoined from designating and publicizing the name of IWO as a Communist organization, and that respondents be directed to remove the name of IWO from the list of designated organizations, to make a public statement of this removal, and to take no action based on the inclusion of IWO in the list of designated organizations. Further, IWO prays for a declaratory judgment that Section 9A of the Hatch Act, as construed and applied by Executive Order 9835 and by respondents, and Executive Order

9835, on its face and as construed and applied by respondents, are unconstitutional.

After the present proceedings were instituted, petitioner Drayton, a Post Office employee who is a member of IWO (R. 53), filed a motion, pursuant to Rules 20 and 24 (b) of the Federal Rules of Civil Procedure, for leave to intervene as plaintiff and to join as defendants the chairman and members of the Loyalty Board of the Post Office Department (R. 32). In his proposed complaint, Drayton alleges that the Loyalty Board of the Post Office Department has "instituted proceedings against plaintiff to procure his dismissal from the federal civil service because of 'disloyalty' evidenced by his membership in the Order;" [3] that in such proceedings the designation of IWO by the Attorney General will be binding on the Loyalty Board and that "plaintiff's dismissal is inevitable;" that such dismissal from the Federal Government would result in his disqualification from private employment; and that respondents have impaired the value of the benefits enjoyed by plaintiff from his membership in

[3] The dissenting opinion in the court below states (R. 69):

> After this appeal was argued, and in response to an inquiry from the bench during the argument of *Washington et al.* v. *McGrath*, No. 10413, the Department of Justice informed us that a finding of "reasonable grounds for belief" that Drayton is disloyal has been made by the Post Office Department Loyalty Board and affirmed by the Postmaster General.

IWO and threaten to destroy them entirely (R. 54–55).

Accordingly, Drayton, in his proposed complaint, joins in the prayers for relief requested by IWO (*supra*, pp. 4–5) and further prays that respondents be enjoined from dismissing plaintiff from his Federal employment because of his membership in IWO (R. 56).

Respondents moved to dismiss the complaint (R. 57) and to deny the motion for intervention (R. 57). Following a hearing, the District Court granted both motions (R. 60). The Court of Appeals affirmed, one judge dissenting (R. 70). As to IWO, the court below held that the differences between IWO and the Joint Anti-Fascist Refugee Committee "do not distinguish the two cases" and accordingly, that, for the reasons set forth in its opinion in the *Joint Anti-Fascist Refugee Committee* case,* IWO has no standing to maintain this action (R. 67). Turning to Drayton's appeal, the court below held that (1) the denial of permissive intervention by the District Court was not an abuse of discretion and, therefore, not reversible error, and (2) the order denying leave to intervene was not a final order and thus not appealable since it did not bar him from instituting an original action of his own (R. 68).

Subsequent to the judgment of the Court of Appeals, the Loyalty Review Board reversed the

---

* *Joint Anti-Fascist Refugee Committee* v. *Clark*, 177 F. 2d 79 (C. A. D. C.).

finding of the Loyalty Board of the Post Office Department that reasonable grounds exist for belief that Drayton is disloyal. Drayton was restored to the rolls of the Post Office Department on July 19, 1950, and returned to duty on July 21, 1950 (Appendix, *infra*, p. 14).

ARGUMENT

The instant case, decided on the authority of *Joint Anti-Fascist Refugee Committee* v. *Clark*, 177 F. 2d 79 (C. A. D. C.), presents the same issues raised by petitioner in that case and advances the same major arguments. See No. 8, this Term, *sub nom. Joint Anti-Fascist Refugee Committee* v. *McGrath*. The Brief for Respondents in the *Joint Anti-Fascist* case develops the reasons and authorities which, we submit, establish the correctness of the decision below. In addition, the Brief for Respondents in *Bailey* v. *Richardson*, No. 49, this Term, demonstrates the occasion for, and the validity of, Executive Order 9835. Accordingly, we need here advert only to certain additional issues not present in those cases.

1. *The International Workers Order, Inc.*— In an effort to show that the designation of IWO by the Attorney General as a Communist organization definitively fixes its status so as to subject its members unconditionally to legal consequences, the complaint alleges that "Members of the Order who have pending petitions for naturalization

have been denied naturalization or have had their petitions held in abeyance because of their membership in the Order solely because the Department of Justice, headed by defendant Clark regards the designation as conclusive, final and not subject to re-opening or hearing in such proceedings." (R. 17–18.) This assertion is completely misleading and only partly true.

It is true that petitions for naturalization filed by members of organizations designated by the Attorney General as Communist have been held up by the Immigration and Naturalization Service. But such petitions have been held in abeyance solely for the purpose of enabling the Immigration and Naturalization Service, whose examiners conduct preliminary hearings for the naturalization court pursuant to Section 333 of the Act of October 14, 1940, 54 Stat. 1137, 8 U. S. C. 733, to conduct its own investigation of whether such organizations fall within the classification of Section 305 of the Act, 8 U. S. C. 705. The Attorney General's list serves only as a source of reference in determining which organizations are to be investigated.[5] Moreover, it is untrue that such peti-

[5] This is clearly demonstrated by examination of Section 305, 8 U. S. C. 705. In pertinent part, that section provides that:

"No person shall hereafter be naturalized as a citizen of the United States—

"(a) Who advises, advocates, or teaches, or who is a member of or affiliated with any organization, association,

fiqners for naturalization have no opportunity to challenge the correctness of a determination that a particular organization comes within the scope of Section 305. Naturalization proceedings are judicial proceedings, not administrative, and the ultimate decision as to the character of the

---

society, or group that advises, advocates, or teaches opposition to all organized government; or

"(b) Who believes in, advises, advocates, or teaches, or who is a member of or affiliated with any organization, association, society, or group that believes in, advises, advocates, or teaches—

"(1) the overthrow by force or violence of the Government of the United States or of all forms of law; or

"(2) the duty, necessity, or propriety of the unlawful assaulting or killing of any officer or officers (either of specific individuals or of officers generally) of the Government of the United States or any other organized government, because of his or their official character; or

"(3) the unlawful damage, injury, or destruction of property; or

"(4) sabotage.

"(c) Who writes, publishes, or causes to be written or published, or who knowingly circulates, distributes, prints, or displays, or knowingly causes to be circulated, distributed, printed, published, or displayed, or who knowingly has in his possession for the purpose of circulation, distribution, publication, or display any written or printed matter advising, advocating, or teaching opposition to all organized government, or advising, advocating, or teaching—

"(1) the overthrow by force or violence of the Government of the United States or of all forms of law; or

"(2) the duty, necessity, or propriety of the unlawful assaulting or killing of any officer or officers (either of

organization is for the naturalization court. By statute, exclusive jurisdiction is vested in the District Courts of the United States and State courts of record having jurisdiction in actions at law and/or equity in which the amount in controversy is unlimited (Section 301, 8 U. S. C. 701). The proceedings are subject to all the rules governing judicial proceedings (Sections 333, 334, 8 U. S. C. 733, 734). Cf. *Tutun* v. *United States*, 270 U. S. 568, 576–578. In this connection, it should be noted that members of IWO have been afforded the opportunity to test, in court, the character of IWO. See

---

specific individuals or of officers generally) of the Government of the United States or of any other organized government; or

"(3) the unlawful damage, injury, or destruction of property; or

"(4) sabotage.

"(d) Who is a member of or affiliated with any organization, association, society, or group that writes, circulates, distributes, prints, publishes, or displays, or causes to be written, circulated, distributed, printed, published, or displayed, or that has in its possession for the purpose of circulation, distribution, publication, issue, or display, any written or printed matter of the character described in subdivision (c)."

Organizations falling within the purview of that section have been designated by the Attorney General as "organizations which 'seek to alter the form of government of the United States by unconstitutional means,'" and IWO is not thus designated. (See Appendix to Brief for Respondents in No. 49, this Term. p. 145.)

Stasiukevich v. *Nicolls*, 168 F. 2d 474 (C. A. 1).[6] We submit, therefore, that this allegation contained in IWO's complaint can, in no way, support IWO's contention that the Attorney General's designation of it as a Communist organization fixes its status so as to give it standing to sue. Indeed, the remedy in the naturalization court is an adequate one which makes relief in equity unnecessary.

IWO further asserts that, as a fraternal organization, it provides insurance for its members and that resignations or withdrawals from membership as a result of the Attorney General's designation of the organization as Communist will reduce the payments to IWO for insurance purposes. Clearly, the Attorney General's designation in no way compels anyone to withdraw from IWO or to cancel his insurance (see Brief

---

[6] In that case, the District Court for the District of Massachusetts had denied petitioner's petition for naturalization, holding that petitioner "has not sustained the burden of proving his attachment" to the principles of the Constitution (*id.* at 476). On appeal, the case was remanded because, in part, the District Court had failed to make any finding of fact as to the character of IWO, of which petitioner was a member. On remand, petitioner withdrew his petition. In a similar case involving IWO, *In re Krishna Chandra*, Naturalization No. 3934 in the District Court for the Northern District of California, petitioner withdrew his petition after the Government had presented part of its case in a hearing held on October 28, 1949, before J. Lemmon.

for Respondents in No. 8, this Term, pp. 28–30). The fact that members may resign voluntarily, as they have a perfect right to do, and thus cease to pay dues which include insurance premiums, is no more a legal consequence of the Attorney General's finding than the fact that persons may have been discouraged from donating funds to the organizations involved in Nos. 7 and 8, this Term.[7]

2. *Arthur Lowndes Drayton.*—Although we believe the reasoning of the court below in affirming the denial of Drayton's motion for leave to intervene (R. 68) is unassailable, it is unnecessary for this Court to pass upon that motion. As revealed by the letter of the Chairman of the Loyalty Review Board (Appendix, *infra,* p. 14), Drayton was notified by letter dated June 29, 1950, that the Loyalty Review Board has reversed the finding of the Loyalty Board of the Post Office Department that reasonable grounds exist for belief that he is disloyal. And on July 19, 1950, Drayton was restored to his position in the Government service. Accordingly, Drayton has no standing to challenge the Attorney

[7] Petitioner alleges that its relationship with its members is contractual in nature. But it is not alleged that the resignation of members, which brings with it a cancellation of the insurance policy, is a violation of any contract. In the absence of any such allegation, it is to be assumed that the members have a right to resign at will.

General's designation of IWO, and his proposed complaint is moot.*

CONCLUSION

For the reasons set forth above and in the Briefs for Respondents in the *Joint Anti-Fascist* and *Bailey* cases (Nos. 8 and 49, this Term), it is respectfully submitted that the judgment of the court below should be affirmed.

PHILIP B. PERLMAN,
Solicitor General.

H. G. MORISON,
Assistant Attorney General.

JAMES L. MORRISSON,
SAMUEL D. SLADE,
BENJAMIN FORMAN,
Attorneys.

OCTOBER 1950.

---

* In this connection, we think it pertinent to note that a similar motion for leave to intervene in the District Court was filed by one Evelyn Bornstein, a member of IWO and an employee of the War Assets Administration, prior to Drayton's motion, and was withdrawn after the charges against her had been dismissed by the War Assets Administrator.

APPENDIX

UNITED STATES
CIVIL SERVICE COMMISSION,
Washington 25, D. C., October 4, 1950.

Honorable PHILIP B. PERLMAN,
Solicitor General, Washington, D. C.

DEAR MR. PERLMAN: In reply to your request concerning the case of Arthur Lowndes Drayton who filed a motion for leave to intervene in the case of International Workers Order versus McGrath, you are advised that Mr. Drayton appealed to the Loyalty Review Board from the adverse decision of the Postmaster General. A panel of the Loyalty Review Board considered the entire record, concluded that reasonable grounds did not exist to believe that Mr. Drayton is disloyal to the Government of the United States, and reversed the finding of the Postmaster General.

Mr. Drayton was notified of this decision by letter from the Loyalty Review Board dated June 29, 1950, and the Post Office Department has advised that Mr. Drayton was restored to the Post Office rolls on July 19, 1950 and he returned to duty on July 21, 1950.

Yours truly,

SETH W. RICHARDSON,
Chairman, Loyalty Review Board.